THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 19775 of 2005

DATED: 08..09..2005

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Between:

1 Smt.K.Seetha Rama Mani, w/o Satyanarayana,
r/o Dhanavayeepeta, Rajahmundry (PO), E.G.District.
2 Kaki Satyanarayana, s/o Venkateswara Rao,
r/o Danavayeepeta, Rajahmundry (PO), E.G.District.

..... PETITIONERS

AND

1 The A.P.Eastern Power Distribution Co.Ltd.,

Visakhapatnam represented by its The Assistant
Divisional Engineer, Operation Sub Division,

Town-2, Morampudi Centre, Rajahmundry (PO),
East Godavari District.
2 The Chairman-cum-Managing Director,

The Corporate Office, A.P.Eastern Power Distribution Co.Ltd.,
Visakhapatnam (PO) District and Daba Gardens.

.....RESPONDENTS

Counsel for the Petitioner:MR.P.NARASIMHA RAO

Counsel for the Respondent No.: MR.V.AJAYAKUMAR

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 19775 of 2005

ORDER:

Declaring the impugned provisional notice, issued by the 1st respondent, in his proceedings in Lr.No.ADE/O/T.2/Rjy/F.RE/ D.No.580/05 dated 14-07-2005, to the petitioners assessing Rs.33,020 - 00/- for a period of one year, as pilferage charges and demanding for payment of 50% of the assessed amount i.e., Rs.16,510-

00/- under the threat of disconnection of power supply to the house of the petitioners vide S.C.No.22438 as illegal and arbitrary the present writ petition has been filed.

Heard both the counsel.

When the matter is taken up for hearing, it is brought to the notice of this court by both the learned counsel for the petitioners and the learned standing counsel for the respondents that the subject matter of this writ petition is squarely covered by a Division Bench judgment of this Court in Writ Appeal Nos.452 and 477 of 2004 dated 11-03-2004 wherein the Division Bench held thus:

> "The authorities do not have any power to forthwith stop or disconnect the supply of electricity while issuing provisional assessment. It was further held that provisional assessment was in the nature of a show cause notice against which the consumer was entitled to have an opportunity of hearing before final orders were passed by the concerned authority and that the notice would be deemed to have been issued only under Section 126 of the Electricity Act under which there was no authority or power to the respondents to discontinue or disconnect electricity supply or call upon the petitioner to pay even part of the provisional assessment amount till final assessment was made. It was further held that only on the consumers not complying with the final assessment, the respondents could proceed further in the matter, which would also be subject to appeals, if any, to be filed by the consumers."

In view of the guidelines laid down in the above judgment, I am of the view that unless and until final assessment is made, the notice impugned herein shall be construed as that of a show cause notice and as such the 1st respondent cannot resort to demand the petitioners to pay the amount in question without affording any opportunity.

In this view of the matter, this writ petition is disposed of directing the petitioner to submit his explanation within a period of four weeks from today and on receipt of such explanation, the 1st respondent shall pass appropriate final orders. No order as to costs.

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K.C.BHANU, J.

Dated: 08-09-2005.

Note:

Issue C.C. in two days.

B/o

RNS